

This is a rough draft, not fully vetted or approved by Workgroup #3, such that it is provided to the Committee for the limited purpose of facilitating discussion and generating guidance from the Committee, which shall assist the Workgroup in completing this task.

STATEWIDE FEE GUIDELINES
For Assessing the Reasonableness
of
FIDUCIARY, GUARDIAN AD LITEM,
AND ATTORNEY COMPENSATION
In Title 14 Proceedings

Introduction:

These guidelines are intended to assist the court, fiduciaries, guardians *ad litem*, attorneys, and interested persons in evaluating whether compensation is reasonable, since professional services must be tailored to the specific circumstances of each engagement, and a one-size-fits-all regulatory approach to professional services and compensation is not practical and not in the best interest of each unique ward, protected person, estate, and trust. Although such regulatory approaches have the attraction of apparent simplicity, the result can be increased administrative costs, diminished quality of professional services, or underserved populations, such that reasonable compensation is best determined on a case-by-case basis, while applying consistent compensation guidelines.

Since every case is different, however, and because every fiduciary, guardian *ad litem*, and attorney has unique qualifications, these fee guidelines set forth compulsory billing standards, points of reference, and general compensation factors, but not predetermined times to perform specific tasks, predetermined rate schedules, or fees as a percent of an estate. Therefore, following compliance with compulsory billing standards, the court shall weigh the totality of the circumstances and, in its discretion, assign more or less weight to any given points of reference or compensation factors as it deems just and reasonable.

Scope:

These guidelines only apply to the compensation of court-appointed fiduciaries, specifically guardians, conservators, and personal representatives, licensed and unlicensed, as well as guardians *ad litem* and attorneys who are paid by a ward, protected person, estate, or

trust (collectively referred to in the *Guidelines* as an “Estate”), but shall not apply to compensation paid to a trustee, if compensation is specified or set forth in the relevant trust, pursuant to *Arizona Revised Statutes*, §14-10708.

Guidelines:

1. Reasonable compensation. Fiduciaries, guardians *ad litem*, and attorneys (collectively referred to in the *Guidelines* as “Professionals”) are entitled to reasonable compensation for the services they render, which results in compensation that is fair, proper, just, moderate, suitable under the circumstances, fit, appropriate to the end in view, and timely paid, consistent with the following guidelines. Compensation for past services is not reasonable *per se*, if the request to seek compensation, as well as the basis for fees, was not timely made.
2. Compulsory billing standards. Unless otherwise ordered by the court, compensation and reimbursement shall meet the following standards:
 - a. All billing shall be in an increment to the nearest 1/10 of an hour, with no minimum billing unit in excess of 1/10 of an hour, i.e. no “value billing”.
 - b. “Block billing” is not permitted.
 - c. Necessary travel time may be billed at 50% of the normal hourly rate, except for time spent on other billable activity, and in-state mileage is not reimbursed; travel time is not necessary when the service can be rendered by correspondence or electronic communication, e.g. telephonic court hearings.
 - d. Necessary waiting time may be billed at the normal hourly rate, except for time spent on other billable activity, commencing no earlier than the scheduled start time of the event.
 - e. Billable time that benefits multiple clients, including travel and waiting time, shall be apportioned between each client.
 - f. Billable time does not include time spent on billing or accounts receivable activities, including time spent preparing itemized statements of work performed, copying, or distributing statements; however, time spent drafting documents that are required by court order, rule or statute, including any related hearing, is billable time. The court shall determine the reasonable compensation, if any, in its sole discretion, concerning any contested litigation over fees or costs.

- g. Billable time does not include internal business activities of the professional, including clerical or secretarial support to the professional, or clerical or secretarial activities performed by the professional.
 - h. The hourly rate charged for any given task shall be at the authorized rate, commensurate with the task performed, regardless of who actually performed the work.
 - i. Costs shall be billed at actual cost, without “mark-up”.
 - j. Time and expenses to correct or mitigate errors caused by the professional, or their staff, are not billable to the estate.
 - k. Time or expenses to respond or defend against a regulatory complaint are not billable to the estate.
3. Points of Reference. The Court shall consider points of reference when considering hourly rates and charges, as an informative but not binding measure, including:
- a. The prevailing average and median rates charged for comparable professional services in the marketplace, as periodically reported by the Administrative Office of the Courts, which is the custodian of fee and biographical information for professionals who are paid by estates. [Show a web address for the information.]
 - b. Taking notice of the average number of billable hours and average units of service that are rendered in comparable cases before that judge, or as reported in any published professional guidelines or standards.
 - c. As a general reference point, a fiduciary should not exceed the following billable hours, without providing a reasonable explanation:
 - i. Bill paying, bank reconciliation, data entry and mail, two (2) hours per month, at a commensurate rate for such services.
 - ii. Routine shopping, six (6) hours per month if ward is at home, and two (2) hour per month if ward in a facility, at a commensurate rate for such services.
 - iii. One routine personal visit per month by the guardian to the ward.
 - iv. Preparation of annual accounting and budget, five (5) hours per year.
 - v. Preparation of annual guardianship report, two (2) hours per year.

- vi. Preparation of inventory, ____ (____) hours.
- d. As a general reference point, an attorney should not exceed the following billable hours, without providing a reasonable explanation:
 - i. ...[Points of reference for legal services]...
- 4. Compensation Factors. The court shall consider the following factors, as general principles, not rigid rules, when determining reasonable compensation:
 - a. The request for compensation in comparison to the previously disclosed basis for fees, and the amount authorized in the approved budget, including any legal presumption of reasonableness or necessity;
 - b. The professional's expertise, training, education, experience, professional standing, and skill, including whether an appointment in a particular matter precluded other employment;
 - c. The character of the work to be done, including difficulty, intricacy, importance, time, skill or license required, or responsibility undertaken;
 - d. The conditions or circumstances of the work, including emergency matters (requiring urgent attention), services provided outside of regular business hours, potential danger (e.g., hazardous materials, contaminated real property, or dangerous persons), or other extraordinary conditions;
 - e. The work actually performed, including the time actually expended, and the attention and skill-level required for each task, including whether a different person could have better, cheaper or faster rendered the service;
 - f. The result, specifically whether the professional was successful, what benefits were derived from the efforts, and whether probable benefits exceeded costs;
 - g. Whether the professional timely disclosed that a projected cost was likely to exceed the probable benefit, affording the court an opportunity to modify its order in furtherance of the best interest of the estate.
 - h. The fees customarily paid, and time customarily expended, for performing like services in the community, including whether the court has previously approved similar fees in another comparable matter;
 - i. The degree of financial or professional risk and responsibility assumed; and

- j. The fidelity and loyalty displayed by the professional, including whether the professional put the best interests of the estate before the economic interest of the professional to continue the engagement.
- k. The “points of reference” for similar activities and market rates, as set forth above.

5. Non-traditional compensation arrangements.

- a. Flat-fee: Unless otherwise prohibited by law or rule, flat-fee compensation is permissible and desirable, and may include all or part of an engagement, if the predictability of costs is enhanced and if the economic interests of the professional are thereby better aligned with the estate.

The basis for any flat-fee compensation shall be disclosed in advance, in writing, such as during budget approval, specifying in-detail the services included in any flat-fee, the units of each service, and the usual hourly rate for such services.

The actual delivery of services included with the flat-fee shall be documented in the accounting, and any earned flat-fee shall be compensated, provided the included units of service were actually provided, and there shall be no adjustment based upon actual time expended. The professional is encouraged to innovate and deliver contracted services as economically as practicable in the marketplace, which will ultimately benefit the estate.

- b. Contingent fee: Unless otherwise prohibited by law or rule, nothing in these guidelines shall prohibit a contingent fee engagement with an attorney, properly executed in writing and approved by the court, e.g. representation on a personal injury claim.

6. Reimbursement for reasonable expenses that were necessarily incurred.

Reimbursement for reasonable and necessary out-of-pocket expenses is permitted, if disclosed in writing as part of the basis for their fees, and to the extent consistent with the approved budget. Such expenses include, but are not limited to, postage, photocopies, out-of-state travel, court and other governmental fees (e.g., filing fees, fees for certified copies of documents, recording fees, etc.), and bonds.

7. No interest on unpaid bills. Professionals may not charge interest on their unpaid compensation or unpaid reimbursement without prior court approval.